United Nations

Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization

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I. INTRODUCTION

1. The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization was convened in accordance with General Assembly resolution 51/209 of 17 December 1996 and met at United Nations Headquarters from 27 January to 7 February 1997.

2. In accordance with paragraph 5 of General Assembly resolution 50/52 of 11 December 1995, the Special Committee was open to all States Members of the United Nations.

3. On behalf of the Secretary-General, Mr. Hans Corell, the Legal Counsel, opened the 1997 session of the Special Committee and made a statement.

4. Mr. Roy S. Lee, Director of the Codification Division of the Office of Legal Affairs, acted as Secretary of the Committee, assisted by the Deputy Director, Mr. Manuel Rama-Montaldo (Deputy Secretary) and assistant secretaries Mr. David Hutchinson, Mr. Mpazi Sinjela, Mr. Vladimir Rudnitsky and Mr. Renan Villacis of the Codification Division.

5. At its 217th meeting, on 27 January 1997, the Special Committee, bearing in mind the terms of the agreement regarding the election of officers reached at its session in 1981,[1] and taking into account the results of the pre-session consultations among its Member States, elected its Bureau as follows:

Chairman: Mr. Dusan Rovensky (Czech Republic)

Vice-Chairmen: Ms. Maria Lourdes Ramiro-Lopez (Philippines)
Mr. Omer Dahab Fadol (Sudan)
Ms. Yamira Cueto Milián (Cuba)

Rapporteur: Mrs. Marja-Liisa Lehto (Finland)

6. The Bureau of the Special Committee also served as the Bureau of the Working Group.

7. Also at its 217th meeting, the Special Committee adopted the following agenda (A/AC.182/L.91):

1. Opening of the session.

2. Election of officers.

3. Adoption of the agenda.

4. Organization of work.

5. Consideration of the questions mentioned in General Assembly resolution 51/209 of 17 December 1996, in accordance with the mandate of the Special Committee as set out in that resolution.

6. Adoption of the report.

8. At its 218th meeting, on 27 January 1997, the Special Committee established a Working Group of the Whole and agreed on the following organization of work: proposals relating to the maintenance of international peace and security (six

meetings); proposals regarding the peaceful settlement of disputes between States (three meetings); proposals concerning the Trusteeship Council (one meeting); the question of identification of new subjects, assistance to working groups on the revitalization of the work of the United Nations and coordination between the Special Committee and other working groups dealing with the reform of the Organization (two meetings); the proposal concerning the amendment to rule 103 of the rules of procedure of the General Assembly (two meetings); and the consideration and adoption of the report (three meetings). The distribution of meetings would be applied with the necessary degree of flexibility, taking into account the progress achieved in the consideration of the items. It was also understood that delegations, if they so wished, could make general statements at plenary meetings.

9. The Special Committee heard general statements at its 218th and 219th meetings, on 27 January and 3 February 1997.

10. With regard to the question of the maintenance of international peace and security, the Special Committee had before it a working paper entitled "Some observations regarding the implementation of the provisions of the Charter of the United Nations, including Article 50 on assistance to third States adversely affected by the application of sanctions under Chapter VII of the Charter", submitted by the Russian Federation at the previous session of the Special Committee, reproduced in the report of the Special Committee to the General Assembly at its fifty-first session,[2] and a working paper submitted by the Russian Federation entitled "Some ideas on the basic conditions and criteria for imposing and implementing sanctions and other enforcement measures" (A/AC.182/L.94; see para. 29 below); a working paper submitted by the Russian Federation at a previous session of the Special Committee entitled "Draft declaration on the basic principles and criteria for the work of United Nations peacekeeping missions and mechanisms for the prevention and settlement of crises and conflicts" (A/AC.182/L.89);[3] an informal working paper also submitted by the Russian Federation, entitled "Some views on the importance of and urgent need for the elaboration of a draft declaration on the basic principles and criteria for the work of United Nations peacekeeping missions and mechanisms for the prevention and settlement of crises and conflicts" (A/AC.182/L.89/Add.1; see para. 58 below); a revised version of the working paper submitted by the Cuban delegation at the 1995 session of the Special Committee, entitled "Strengthening of the role of the Organization and enhancing its effectiveness" (A/AC.182/L.93; see para. 59 below); and a revised proposal submitted by the Libyan Arab Jamahiriya at the previous session of the Special Committee with a view to strengthening the role of the United Nations in the maintenance of international peace and security (A/AC.182/L.90).[4]

11. With regard to the peaceful settlement of disputes between States, the Special Committee had before it a proposal entitled "Establishment of a dispute settlement service offering or responding with its services early in disputes" submitted by Sierra Leone at the 1995 session of the Committee.[5] It also had before it an annotation to the above-mentioned proposal contained in a letter dated 1 September 1995 from the Permanent Representative of Sierra Leone to the United Nations addressed to the Secretary-General (A/50/403, annex),[6] and a revised proposal submitted by Sierra Leone entitled "Establishment of a dispute prevention and early settlement service" (A/AC.182/L.96; see para. 75 below). The Committee also had before it a working paper submitted by Guatemala entitled "Possible amendments to the Statute of the International Court of Justice to extend its competence with respect to contentious matters to disputes between States and international organizations" (A/AC.182/L.95/Rev.1; see para. 101 below); it furthermore had before it a working paper submitted by Costa Rica

(A/AC.182/L.97) as an alternative drafting to the working paper submitted by Guatemala (A/AC.182/L.95/Rev.1) entitled "Possible amendments to the Statute of the International Court of Justice to extend its competence with respect to contentious matters to disputes between States and international organizations" (see para. 115 below).

12. The Special Committee also had before it a working paper submitted by Portugal, dealing with the amendment of rule 103 of the rules of procedure of the General Assembly (A/AC.182/L.92/Rev.1; see para. 133 below).

II. RECOMMENDATIONS OF THE SPECIAL COMMITTEE

13. The Special Committee submits to the General Assembly:

(a) As regards the question of the implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions under Chapter VII of the Charter, the recommendation contained in paragraph 28 below;

(b) As regards the question of identification of new subjects, assistance to working groups on the revitalization of the work of the United Nations and coordination between the Special Committee and other working groups dealing with the reform of the Organization, the recommendations contained in paragraphs 130 and 139 below.

III. MAINTENANCE OF INTERNATIONAL PEACE AND SECURITY

A. Implementation of Charter provisions related to assistance to third States affected by sanctions

14. Representatives who spoke on this topic underscored the great importance they attached to the question of implementation of Charter provisions related to assistance to third States affected by the application of sanctions.

15. Some representatives expressed the view that assistance to third States affected by the application of sanctions was a legal obligation under the Charter of the United Nations and that it was imperative for the United Nations to establish appropriate mechanisms to deal with the problem, including the provision of financial resources to offset the economic losses suffered by the affected third States. Moreover, such assistance should be automatic and predictable. The view was also expressed that sanctions should not be used as the primary means in the resolution of international disputes, so as to reduce the possibility of generating adverse effects upon third States. Upon the imposition of sanctions, the Security Council should establish a funding mechanism financed from assessed contributions and supplemented by voluntary contributions to assist the affected third States.

16. It was also stressed that in order to arrive at the intended objective of Article 50, it was necessary to interpret its provisions in the letter and spirit of the Charter and the principles governing treaty interpretation. A proposal was made that the General Assembly should request an advisory opinion from the International Court of Justice regarding the scope of application of sanctions. Even in its literal interpretation, Article 50 implied that due weight must be given to a State's claim for economic assistance for losses incurred from the imposition of sanctions. In the view of those representatives the Security Council was the appropriate forum for dealing with this question. It was therefore considered inappropriate for any attempt to be made to shift the focus of this issue to other forums, such as the international financial institutions, which had their own mandate and could not be a reliable source of assistance for the affected third States.

17. Other speakers stressed the need to preserve the overall effectiveness of sanctions regimes while at the same time trying to find appropriate measures to address the problems third States might encounter as a result of the implementation of sanctions.

18. Reference was made to the work of the General Assembly on this question and to the adoption of resolutions 50/51 of 11 December 1995 and 51/208 of 17 December 1996. Those resolutions were considered to represent an extremely positive development and to provide a solid point of reference for further work. The report of the Secretary-General (A/51/317) submitted pursuant to resolution 50/51 provided a valuable analysis and contained essential elements for addressing in practical terms some of the problems affecting third States resulting from the application of sanctions. The measures outlined therein were aimed at providing better information and early assessment at the request of the Security Council concerning the effects of sanctions on third States. The Secretary-General was however requested to take further action in finding practical ways of assisting affected third States and in creating permanent mechanisms to deal with the problem in a more concrete manner and to prepare the guidelines on technical procedures to be used by the appropriate parts of the Secretariat, as decided in General Assembly resolution 50/51.

19. According to another point of view, the provisions of Article 50 of the Charter did not provide a right to compensation for third States affected by the imposition of sanctions. The right given by Article 50 was for the affected third States to consult with the Security Council with regard to a solution of the problems resulting from the imposition of sanctions. Pursuant to the provisions of Article 50, the Security Council had in a number of instances (such as in connection with the imposition of sanctions against Southern Rhodesia, Iraq and the Federal Republic of Yugoslavia) taken practical measures to assist third States that had experienced special economic problems as a result of the imposition of sanctions. The substantial work that had been done with respect to Article 50 of the Charter by the Security Council and the General Assembly, including the Sixth Committee and the Committee dealing with the annual resolution on economic assistance to States affected by sanctions against the Federal Republic of Yugoslavia should be allowed to take its natural effect.

20. According to another view, however, ad hoc approaches to the problem of third States affected by the application of sanctions were inadequate and it was necessary to find a permanent solution to such problems through the establishment of permanent mechanisms.

21. Attention was drawn to paragraph 9 of resolution 51/208 on the need for the Special Committee to consider on a "priority basis" the question of assistance to third States affected by the application of sanctions. The view was expressed in this connection that, given the fact that existing mechanisms were rather ad hoc in nature, there was the need to develop a "further mechanism" on the issue, pursuant to paragraph 2 of the same resolution, with a view to increasing the effectiveness of the assistance procedure.

22. Some speakers referred to concrete measures and proposals that were considered to be a positive outcome of the ongoing effort to find practical solutions to this problem. The proposal for holding consultations with experts inside and outside the United Nations, and in particular with the international financial institutions, with a view to developing a possible methodology for assessing the financial losses actually incurred by third States as a result of the application of sanctions, was considered as deserving of further consideration.

23. Another measure to which some speakers attached importance was for the affected third States to be fully involved in the decision-making concerning both the imposition of sanctions and the practical steps to be taken to alleviate the negative impact of sanctions on them. The speakers underscored the role of the General Assembly and the Economic and Social Council as well as that of the Committee for Programme and Coordination in mobilizing and monitoring economic assistance from the international community and the United Nations to States confronted with special economic problems. The need for the creation of an appropriate organizational framework for dealing with these problems was also stressed. A further concrete step towards assistance to those States was that the provisions of Articles 49 and 50 should not be subjected to the exercise of the veto.

24. Reference was made to the work of the Informal Open-ended Working Group of the General Assembly on an Agenda for Peace, whose Sub-group on the question of United Nations-imposed sanctions had provisionally agreed upon a text on this question.[7] That text was to constitute the reaction of the General Assembly to the Secretary-General's Supplement to an Agenda for Peace as regards the subject of sanctions.[8]

25. In this connection some delegations pointed out that the question pertaining to Article 50 of the Charter had not been discussed in detail in the Sub-group and, as had been agreed in the Committee on Sanctions, detailed consideration of the issue should take place in the Sixth Committee and in the Special Committee on the Charter.

26. As for the future consideration of the question, it was suggested that the Special Committee should recommend to the General Assembly that the Sixth Committee at its fifty-second session, establish a working group to continue with the consideration of the issue. However, another view was expressed that there would be no need for the Sixth Committee to establish such a working group before the work that had so far been carried out was allowed to take effect or that ongoing work was allowed to be completed. Still others, while remaining flexible as to the question of institutional framework, pointed out that much work remained to be done.

27. A proposal was made in this connection that in order to make a clear evaluation of what further work was needed to be carried out on the issue, an inventory should be made. This inventory should form a composite document for ease of reference.

28. As a result of its deliberations, the Special Committee invited the General Assembly at its fifty-second session to consider the question of an appropriate organizational framework for addressing further the implementation of the provisions of the Charter relating to assistance to third States affected by the application of sanctions under Chapter VII of the Charter and the implementation of the provisions of resolutions 50/51 and 51/208 taking into account the reports of the Secretary-General as well as the proposals presented and views expressed in the Special Committee.

Working paper submitted by the Russian Federation (A/AC.182/L.94)

29. At the 5th meeting of the Working Group, on 31 January 1997, the representative of the Russian Federation introduced a revised working paper entitled "Some ideas on the basic conditions and criteria for imposing and implementing sanctions and other enforcement measures" (A/AC.182/L.94), which read as follows:

> "1. During its more than half-century of existence, the United Nations has developed a broad and diversified arsenal of means and instruments for the peaceful settlement of disputes and conflicts, as well as measures for exerting pressure on States whose policies pose a threat to the maintenance of international peace and security. Experience has shown that the United Nations has long placed special emphasis on the implementation of discretionary measures (negotiations, retortion, provisional measures under Article 40 of the Charter of the United Nations, non-binding sanctions imposed in accordance with General Assembly resolutions and implemented individually or collectively by States, and so on) and only in exceptional cases resorted to the use of mandatory sanctions and other enforcement measures not involving the use of armed force. This approach has made it possible to settle, in a more or less satisfactory manner, a number of international disputes and conflicts - by some counts, more than one hundred have been referred to the United Nations for consideration. However, in recent years, the United Nations has developed a kind of 'sanctions syndrome' - the desire to impose sanctions and enforcement

measures more broadly and more actively, sometimes in disregard of the political and diplomatic options that remain open.

"2. However, if the application of mandatory sanctions in the case of an armed invasion of the territory of another State and a direct breach of international peace can be considered warranted from the point of view of the Charter and international law, in most other cases this can be - and has been - counterproductive and has had negative and destructive consequences not only for one or several States but for the entire international community.

"3. At times the implementation of sanctions in the new generation of disputes and conflicts, especially those involving inter-ethnic, interdenominational, territorial or other contradictions both between and - in particular - within States, seems questionable from a legal standpoint. In such conflicts, particularly in the case of a civil war, it is often difficult to determine which party is guilty of violating the peace, and the sanctions themselves may be indiscriminate, non-specific and, consequently ineffective and may only increase the already excessive burdens and sufferings borne by the innocent civilian population.

"4. In such conflicts, consideration could, we believe, be given in a number of cases, not to mandatory sanctions but to another kind of measure employed by the Security Council, namely, provisional measures under Chapter VII, Article 40, of the Charter. Such measures are more in keeping with the aims of the peaceful and just settlement of conflicts, since they should be without prejudice to the rights, claims or position of the parties concerned and should only prevent an aggravation of the situation. The potential appeal of such measures is that they can ensure a flexible response to changes in the situation in the conflict region, prevent accusations of 'double standards' and bias towards one of the parties to the conflict and reduce, if not eliminate, the special economic problems that the implementation of sanctions causes for third States. In practice, the Security Council's application of provisional measures has led to very tangible results in the settlement of international disputes and conflicts. The practical elaboration of the problems relating to provisional measures therefore seems quite urgent.

"5. Of course, one cannot rule out the application of sanctions and other enforcement measures against those who stubbornly ignore United Nations demands. However, the adoption of such measures should in no case be approached from politically or ideologically partial or emotional positions. The threshold for the use of such measures should be high and clear criteria should be employed.

"6. Such criteria include a real threat to international peace and security, the exhaustion of all other means, calculation of the probable consequences, the proportionality of the response to the threat, and so on. It follows that any sanctions should be part of the search for a long-term political settlement of the conflict, reflect the strategic goals of the entire international community, take account of the political and 'physical' (in terms of death and suffering among the civilian population and the destruction of material values) cost of such actions.

"7. In such exceptional cases, when the question of imposing mandatory sanctions arises, it is necessary to proceed from the fact that such measures are only one of a number of the non-military means of overcoming a

real threat to international peace and security. In order to be warranted and effective, the sanctions must be strictly in keeping with the provisions of the Charter. They should be based not on political expediency but on a solid international legal basis and be implemented, as required by the Charter in accordance with the principles of justice and international law.

"8. From the point of view of international law and justice, the sanctions should not have the implicit objective of causing of damage to third States, since this would undermine the very idea of such measures. Many countries (which have suffered and continue to suffer great material and financial damage as a result of sanctions) are therefore completely justified in their desire to elaborate basic criteria and conditions for the application and implementation of mandatory sanctions, and develop ways and means of preventing the adverse consequences of such sanctions or, at least, reducing them to a minimum. In our view, such basic criteria and conditions include the following:

"(a) The imposition of mandatory sanctions is a radical measure and is permitted only after all other peaceful means of settling the dispute or conflict have been exhausted, and only when the Security Council has determined the existence of any threat to the peace, breach of the peace or act of aggression;

"(b) The application of sanctions is permissible only in the case of a real, objectively verified and proven threat to the peace or breach of the peace;

"(c) The obligatory use, particularly in questionable cases, of - first and foremost - discretionary measures, including negotiations, provisional measures under Article 40 of the Charter, of 'voluntary' (General Assembly) sanctions until the opportunity arises to apply Security Council sanctions;

"(d) The inadmissibility of creating a situation in which the imposition of sanctions would cause significant material and financial damage to third States;

"(e) The inadmissibility, without the appropriate Security Council decision, to make new demands on the State against which sanctions have been imposed, or to stipulate additional conditions for ending or suspending the sanctions;

"(f) The obligation to make an objective assessment of the short- and long-term social and economic and humanitarian consequences of the sanctions during both the preparatory and implementation stage;

"(g) The inadmissibility of imposing sanctions without a time limit.

"9. In considering problems relating to sanctions, particular attention should be given to the concept of the 'humanitarian limits' of the sanctions. The Russian Federation, which initiated the discussion on this subject in the United Nations, considers that the basic components of the concept could include the following:

"(a) The inadmissibility of creating a situation in which the sanctions would cause unacceptable suffering among the civilian population, especially its most vulnerable sectors;

"(b) The possibility of periodically adjusting the sanctions in the light of the humanitarian situation and depending on whether the State against which sanctions have been imposed is complying with the Security Council's demands;

"(c) The possibility of including in Security Council decisions a provision on the temporary suspension of sanctions in extraordinary situations of force majeure in order to avert a humanitarian catastrophe;

"(d) Guaranteed unimpeded and non-discriminatory access of humanitarian aid to the populations of countries against which sanctions have been imposed, particularly in the case of potentially unstable or least developed countries;

"(e) Rejection of measures that could lead to an unacceptable deterioration of the situation of the civilian population and the collapse of the infrastructure of the State against which sanctions have been imposed;

"(f) Greater attention to the opinions of international humanitarian organizations in the preparation and implementation of sanctions regimes;

"(g) In the case of a full-scale economic embargo, allowing sanctions committees to approve the export of the domestic products of the country against which sanctions have been imposed in order to enable it to pay for humanitarian imports; such imports would, of course, be subject to strict international control;

"(h) With a view to facilitating delivery of the most essential humanitarian supplies, waiving the requirement of providing preliminary notification to sanctions committees regarding the intended export of basic foodstuffs and medicines, and the adoption of the practice of post factum notification, that is, notification after delivery;

"(i) The complete exemption of international humanitarian organizations from sanctions restrictions so as not to hamper their work in the countries against which sanctions have been imposed;

"(j) Maximum simplification of the procedure for approving deliveries to the population of vitally needed humanitarian goods, and the exemption of medicines and basic commodities from any Security Council sanctions regime;

"(k) Strict observance of the principles of impartiality and the inadmissibility of any form of discrimination in the provision of humanitarian and medical assistance and other forms of humanitarian aid to all sectors and groups of the population of all parties to the conflict.

"10. These, and possibly other, ideas could form the basis for the drafting and approval within the Special Committee on the Charter of the United Nations, of a memorandum of understanding or other instrument dealing with the problems of sanctions. In the preparation of the instrument, account could be taken of the provisions of General Assembly

resolution 51/208 of 17 December 1996 and the proposals contained in the Secretary-General's report of 30 August 1996 (A/51/317), in particular the proposals on a number of guidelines on technical procedures to be used by the Secretariat, and developing a possible methodology for assessing the consequences actually incurred by third States as a result of the implementation of the sanctions. The preparation of such a document would make it possible to elucidate the content and basic elements of the complex institution of sanctions, and strengthen the international legal basis for their application. This could be of great use in the work of both the Security Council and the United Nations as a whole and its regional organizations."

30. The sponsor stated that, in preparing the paper, a number of fundamental considerations had been taken into account: the current state of the sanctions regime; what the regime was originally intended to achieve and how it functioned in reality; and what place sanctions occupied vis-à-vis the peaceful settlement of disputes among States. The sponsor observed that although there had been a total of 116 instances during the twentieth century in which sanctions had been imposed, the intended objectives had been achieved in only 41 of them. The success rate in the latter instances had been about 50 per cent before the 1980s and about 25 per cent after the 1980s. This drop was attributed to the destructive effects sanctions had begun to have on the civilian populations, resulting in hunger, poverty and economic destruction. Such sanctions had also led to a disproportionate negative economic effect on third States. The problem of the imposition of sanctions had therefore acquired a legal as well as a political and an economic dimension whose negative consequences affected entire regions. It was thus necessary to examine the reasons why the regime was not functioning properly and to recommend remedial action necessary to correct this anomaly. Moreover, it was necessary to infuse humanitarian elements such as those proposed in paragraph 8 of the working paper in cases where sanctions had already been imposed in order to alleviate human suffering.

31. Some speakers observed that the issues raised in the revised working paper were genuine and deserved serious consideration and support.

32. On the question of sanctions, it was stated that they should not be viewed as having a punitive objective, but were rather intended to modify a State's behaviour. Their objective should always be to eliminate a threat to regional peace and security. Sanctions should not be used as a regular instrument of foreign policy. They should, moreover, have a time-frame and should be lifted as soon as they had achieved their intended objective.

33. The point was further stressed that sanctions should be used as a last resort when all other peaceful means for settling a dispute, including referral of the dispute to the International Court of Justice, had been exhausted. Sanctions should be applied only in situations that posed a genuine threat to international peace and security. Prior to the invocation of Chapter VII of the Charter, other provisional measures such as those in Articles 39 and 40 of the Charter should be applied.

34. The view was expressed by other speakers that swift implementation of sanctions was a sine qua non for the preservation of international peace and security. Sanctions were designed to be used as an alternative to the use of force. Sanctions had, moreover, worked well in many instances, such as in Southern Rhodesia and South Africa. Since sanctions were not punitive in nature, it would not be realistic to set a time limit within which to apply them.

35. It was also pointed out that the issue of sanctions had been under active consideration in the above-mentioned Sub-group of the Working Group on an Agenda for Peace, which had adopted a provisional text containing essentially the same elements as those included in the revised working paper presented by the Russian Federation. Consideration of this issue in the Special Committee would be a duplication of work. There was also a possibility of inconsistencies or contradictions arising in the outcome of work if considered by more than one group.

36. According to other representatives, the Special Committee on the Charter was the right forum for a discussion of legal issues pertaining to the Charter and many legal aspects relating to this question could usefully be discussed by the Committee. The Sub-group of the Working Group on an Agenda for Peace was considering the issue from a political rather than from a legal point of view. A close examination of the work adopted by that Sub-group also revealed issues that were complementary to those in the revised working paper.

37. Some procedural aspects were also raised in regard to the consideration of the working paper. It was pointed out that it did not contain any substantive issues relating to Article 50 of the Charter. The question whether it should therefore be discussed in the Charter Committee or whether it should be left for consideration in other forums required further discussion. There was also the view that the working paper had been proposed with a view to regulating the application of sanctions by revising their threshold; this was valuable since it could in time reduce the adverse effects upon third States. A clarification was sought as to the use in the working paper of terms such as "sanctions", "other enforcement measures" and "mandatory sanctions", which might refer to sanctions of a different degree.

38. Some delegations raised the question of the final product of the working paper; some of them suggested that the outcome should be embodied in a declaration; some others favoured the adoption of a memorandum of understanding.

B. Draft declaration on the basic principles and criteria for the work of the United Nations peacekeeping missions and mechanisms for the prevention and settlement of crises and conflicts

39. At the 1st meeting of the Working Group, on 28 January 1997, the representative of the Russian Federation referred to the working paper entitled "Draft declaration on the basic principles and criteria for the work of United Nations peacekeeping missions and mechanisms for the prevention and settlement of crises and conflicts".[9] An exchange of views ensued in subsequent meetings.

40. The sponsor stated that the purpose of the draft declaration was to develop a comprehensive United Nations document in the format of a declaration containing a set of model basic principles, agreed by all Member States, to guide peacekeeping and other relevant activities of the Organization. In the view of the sponsor, the formulation of such principles would create a stable and clear normative basis for those activities, enhance their legitimacy and efficiency and facilitate relevant activities of all Member States, without limiting the prerogatives of the Security Council and other organs of the Organization. Such a draft declaration would also constitute a source of information for Governments, national legislatures, public opinion and the mass media about United Nations operations. The formulation of the relevant basic principles and criteria in the format of a declaration, based on the practice of the Organization in this area, and its adoption by consensus would be another

important contribution of the Special Committee to the codification and progressive development of international law.

41. The sponsor further stated that the United Nations was lagging behind some regional organizations, which had already adopted relevant instruments in this area. The United Nations needed a global instrument containing a compendium of principles and criteria relevant to its activities in the field of preventing and settling conflicts both between and within States. The draft declaration was intended to cover all relevant mechanisms in that field and important principles such as the prevention and peaceful settlement of disputes, impartiality, consent of parties and non-use of force. The primary responsibility of the Security Council for the maintenance of international peace and security would naturally be stressed. While acknowledging that the various working groups within the Organization were dealing with individual aspects of this problem, the sponsor noted that they were doing so in a context and manner which were primarily political and operational in nature, whereas the Special Committee, being a body with highly qualified legal expertise, was best suited for dealing with the mere legal aspects of the matter, which were the subject of the proposed declaration.

42. A number of speakers felt that it was not appropriate at the current stage to consider the draft declaration on a paragraph-by-paragraph basis. Doubts were raised as to the need to develop such a declaration and the feasibility of applying a set of principles to diverse operations and mechanisms that were significantly different in their scope, nature and mandate. It was also argued that there was sufficient legal basis for such activities.

43. Some delegates stated that there was a need to clarify the meaning of the various terms used in the draft, including "mechanisms", "conflicts of a new generation" and "ethnic" and "religious" conflicts, as well as to explain the linkage between intra-State conflicts and international security. The sponsor explained that the expression "conflicts of a new generation" was used to refer to various intra-national, inter-ethnic, ideological, religious and other conflicts within and between States that posed a serious threat to international peace and security. As regards the term "mechanisms", the sponsor thought that it could be replaced by an expression such as "institutions" or "mechanisms and institutions" or by any other appropriate term, though the term "mechanisms" was not an uncommon term for international documents.

44. There was also the view that the draft declaration mixed together principles of various natures - operational, political and legal - and that the objectives and scope of the paper had not been adequately explained. The sponsor stated that the draft declaration was intended to deal primarily with issues under Chapter VI of the Charter and, in the context of interim measures, with issues under Chapter VII. Its broad scope was designed to take into account specific features of various missions.

45. It was also pointed out by some delegates that issues such as operational principles were outside the Special Committee's mandate and fell within the competence of such other bodies as the Special Committee on Peacekeeping Operations and the Fifth Committee. In the sponsor's view, there was no possible duplication with the work of those bodies since they dealt primarily with operational, political, technical and administrative issues. The Special Committee on the Charter was mandated by the General Assembly to deal with legal issues relevant to this topic. The sponsor also highlighted the many provisions of the draft declaration that addressed issues of law, in particular operative paragraphs 2, 3, 6, 7, 12, 13, 17, 19, 20 and 21.

46. Some other delegations considered the draft declaration to be a relevant, realistic and timely proposal, reflecting the need for consolidating and developing a proper legal basis and procedures for peacekeeping, preventive and other relevant operations of the United Nations. In their view, the draft provided a proper overall framework for such operations and contained a number of legal elements such as the principles of consent, impartiality and neutrality, non-use of force, non-intervention in domestic affairs, peaceful settlement of disputes and respect for State sovereignty.

47. It was suggested that the sponsor of the proposal might wish to examine the report of the Special Committee on Peacekeeping Operations of 7 May 1996 (A/51/130). The sponsor felt that that report was mainly concerned with operational and practical problems in the field of peacekeeping and only very briefly mentioned the relevant legal issues. The sponsor also noted instances in which the Special Committee on Peacekeeping Operations rather than preparing legal drafts had entrusted the Secretariat with this task.

48. It was suggested that the scope of the proposal should also encompass conflicts brought about by extreme poverty and underdevelopment, as well as issues arising from the status of the personnel of the United Nations peacekeeping operations and from United Nations ad hoc and special missions and that United Nations operations were covered by the laws of war.

49. The suggestion was made that the sponsor could perhaps, in the light of the discussion at the current session, prepare a revised version of its proposal for the forthcoming session of the Special Committee, identifying, in particular, those legal principles and issues which merited its consideration.

50. Some delegations made observations on the substance of a number of the paragraphs of the draft declaration.

51. Regarding paragraph 2, doubts were raised as to the need to refer to the validity of relevant mechanisms under international law, since such United Nations mechanisms should obviously function on the basis of its Charter. The notion of neutrality and impartiality of such mechanisms was considered too general and might raise various questions depending on the nature and circumstances of relevant operations, for instance, regarding the possibility for the United Nations personnel to open fire in self-defence. The sponsor indicated that the issue of validity of the United Nations operations under international law was relevant, since various decisions regarding such operations had often been criticized by States as insufficiently founded on the Charter. The principles of neutrality and impartiality should also be reflected in the instrument since their violation could lead to the aggravation of conflicts. In the view of the sponsor, United Nations personnel were not prevented, under existing law and practice, from resorting to weapons in self-defence in case of armed attacks and in response to violent actions aimed at making the implementation of their mandate impossible.

52. It was noted that paragraph 3 was unclear as to the kind of agreements to which it referred. The sponsor underscored the importance of indicating clearly the Charter of the United Nations, Security Council decisions and international agreements as the legal basis of the mandate of the mechanisms. Other acts or forms of action of the Security Council, such as the statements of its President, could raise doubts and controversy as to their legal nature and validity. The sponsor was ready to clarify in greater detail the contents of this paragraph by enumerating some relevant agreements and decisions.

53. The need for paragraph 7 was questioned. It was stated that, while the existence of regional arrangements could not be called into question under the Charter of the United Nations, the contents of the paragraph in relation to Article 52 of the Charter raised some doubts. In this regard, the sponsor stressed that the issue of the legitimacy of regional arrangements and agencies under Chapter VIII of the Charter was far from being simple. Some regional structures did not fall under this category. Peacekeeping activities of those structures that were not legitimate under Chapter VIII of the Charter had a potential of creating serious legal and political problems.

54. Concerning paragraph 9, it was stated that the principle of the consent of the relevant parties, which was described as one of the main conditions for the operation of the mechanisms, was not applicable to all situations, for instance, in the case of "provisional measures" under Article 40 of the Charter.

55. Clarification was also requested in the context of paragraph 12 regarding the possibility of expanding the functions of the mechanisms by the agreement of the parties, even though the approval of the Security Council was required. In this regard, the sponsor pointed out that, since there were cases of departure from the original mandate of the missions and from their impartiality, the issue of the regulation of additional functions was very relevant. The issue was also important in the context of the relevant activities of humanitarian organizations, which have their own mandate as distinct from intergovernmental organizations. Additional functions of relevant mechanisms should, however, be approved by the Security Council, or by other bodies mandating such operations, as was provided for in paragraph 12 of the draft declaration.

56. In support of the draft declaration, it was further suggested that the instrument should also cover certain "grey areas" of peacekeeping, e.g. violation of ceasefire, partial consent or consent by one party, hostilities against peacekeepers, etc.

57. The view was expressed that principles or norms should be developed to deal with situations or conditions where peacekeeping operations might be launched: the breach of international peace and security, when a ceasefire has been reached, when a consent to deploy United Nations peacekeeping forces has been secured from the host country and other parties involved, in cases involving operations in intra-State conflict, and in cases of expanded or second-generation peacekeeping operations. Such principles should form part of a new chapter in the Charter of the United Nations. It was also suggested that the status-of-forces agreement should be negotiated before deployment with relevant parties to the conflict, delineating the responsibilities of the parties as well as activities to be performed by the United Nations peacekeeping forces.

58. The Russian Federation also submitted to the Working Group the following informal working paper entitled "Some views on the importance of and urgent need for the elaboration of a draft declaration on the basic principles and criteria for the work of United Nations peacekeeping missions and mechanisms for the prevention and settlement of crises and conflicts" (A/AC.182/L.89/Add.1), reading as follows:

> "1. In the course of the Special Committee's discussion of the draft declaration on the basic principles and criteria for the work of United Nations peacekeeping missions and mechanisms for the prevention and settlement of crises and conflicts, a number of delegations expressed the wish to clarify the goal of and the need for the draft declaration and to set forth, to the extent possible, their views on this matter in writing in

order to help the Governments of the States that are members of the Special Committee to determine their positions on the question.

"2. Responding in a positive manner to this wish, we feel that it is possible to make the following observations.

"3. The basic goal in elaborating a draft declaration is to place the prevention and settlement of crises and conflicts on a more solid normative basis, develop and concretize a number of general provisions in the Charter of the United Nations and take account of the useful experience acquired by the United Nations over the more than half century of its work in this area. The declaration could confirm the principles and criteria in effect, which are set forth separately in various United Nations documents, and unify them, summarize and systematize the practice of the functioning of United Nations peacekeeping missions, instruments and mechanisms and thereby make a substantial contribution to the further development of the Organization's anti-crisis potential in accordance with its Charter. The proposed draft declaration deals not with some sort of single concrete mechanism for preventing and settling conflicts, but rather with the total number of such mechanisms, of course, while maintaining the specific characteristics of each of them, and with the formulation of the fundamental basic principles and criteria for their establishment and functioning, while retaining the main responsibility of the Security Council for the maintenance of international peace and security.

"4. The declaration is needed by the States Members of the United Nations that provide the personnel and logistical support for the mechanisms. States must have a clear idea about the goals for which the mechanisms are set up, the principles and standards for their formation, the legal, political, financial and other implications of their possible participation in the mechanisms, and the level of the risk posed to the lives of personnel sent by them and so forth. All these questions are being actively discussed in the parliaments and governmental and public circles of States. The declaration would help to eliminate or minimize the concerns and critical observations put forward.

"5. The provisions of the declaration could prove useful to the Security Council in drawing up the mandates of the mechanisms and monitoring their activities. It stands to reason that the discretionary powers of the Security Council would be fully maintained in this regard.

"6. The declaration could be of practical interest also for the Secretariat, which would plan, prepare and carry out the activities of the mechanisms.

"7. The ideas set forth in the draft declaration might prove to be useful also to numerous regional organizations and structures by representing an original model and standard as they draw up their own rules and criteria for establishing regional peacekeeping mechanisms and institutes.

"8. The declaration would contribute to efforts to carry out the task provided for under the Charter of the United Nations (art. 13) of encouraging the progressive development of international law, adapting the Charter to the changing conditions in the development of international relations and concretizing the general principles and provisions of the Charter.

"9. The declaration would be of great importance in informing, through the mass media, world public opinion, and the parliaments and Governments of States about the basic principles and standards of United Nations peacekeeping activities, thereby making it possible to diminish and even eliminate the not infrequent suspicion and at times negative attitude with regard to the steps and actions taken by the United Nations in the field of peacekeeping and enhancing the Organization's authority and role in world affairs."

C. Consideration of the revised[10] working paper submitted by Cuba, entitled "Strengthening of the role of the Organization and enhancing its effectiveness"

59. At the 2nd meeting of the Working Group, on 28 January 1997, the representative of Cuba introduced a revised working paper (A/AC.182/L.93) under the above title, which read as follows:

"In accordance with its mandate as set forth in General Assembly resolution 3499 (XXX), of 15 December 1975, the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization must be directly involved in the restructuring exercise that is being conducted in the United Nations through the intensive process of negotiations carried on in the various open-ended working groups of the General Assembly in response to the growing recognition of the need for a comprehensive reform of the principal organs of the Organization.

"The necessity of reforming the Security Council by making it more representative, more transparent and more democratic in its operations, and the necessity of achieving the delicate balance envisaged in the Charter between the roles of all the principal organs, and in particular, between the role of the General Assembly and that of the Security Council, impose on the Special Committee specific tasks in fulfilment of its mandate.

"These tasks are also dictated by the increase in the membership of the Organization, by the full application of the principles of sovereign equality and equitable geographical representation based on the Organization's universal nature, and by the recognition that the United Nations remains a viable alternative for Member States.

"Accordingly, the Special Committee has the important task of contributing actively to the efforts under way in the various open-ended working groups of the General Assembly by providing a legal analysis, from a juridical perspective, on fundamental issues involved in the reform process, such as:

- the powers of the Security Council and the General Assembly in respect of the maintenance of international peace and security;

- the working methods of the Security Council in relation to other principal organs of the Organization and Member States.

"On the basis of the foregoing, the Special Committee should perform the following tasks:

"(a) Contribute, with studies of a legal nature, to the implementation of Chapter IV of the Charter, specifically Articles 10, 11, 12, 13, 14 and 15, dealing with the functions and powers of the General Assembly;

"(b) Study, in the light of the reform process, the validity in the present circumstances of the general exception contained in Article 12 of the Charter with respect to the measures which the General Assembly may recommend with regard to a dispute which is being dealt with by the Security Council in the exercise of the functions assigned to it under the Charter;

"(c) Determine what elements should be included in the definitive rules of procedure of the Security Council;

"(d) Identify and develop approaches to the election of the Secretary-General of the United Nations so that the General Assembly will, in practice, have more than just a formal role in the process;

"(e) Study the cases in which the Security Council has invoked Chapter VII of the Charter and make recommendations on the application of that Chapter;

"(f) Consider possible measures for improving relations between the General Assembly and the Security Council and especially to evaluate the importance of General Assembly resolution 51/193, adopted at the fifty-first session on 17 December 1996, concerning the report of the Security Council."

"The Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization may implement the aforementioned measures either directly or by creating subsidiary organs of an ad hoc nature."

60. The sponsor pointed out that the revised document did not constitute an abandonment of the ideas in its original 1992 proposal which Cuba had reaffirmed in various United Nations forums, and which were not exclusive to Cuba, since they had been shared and expressed by many other Member States. The sole purpose of the new proposal was to consider, from a current perspective, the roles and tasks to be undertaken by the Special Committee in the light of its mandate and in view of the reform process taking place in the Organization.

61. The revised proposal was based on the premise that the maintenance of international peace and security required true and effective democratization of the existing system of international relations and that the democratization of the United Nations was an equally indispensable condition for strengthening its role in the maintenance of international peace and security.

62. The sponsor pointed out that the constitutive nature of the Security Council, its composition and membership, the way it operated and its relation to the rest of the United Nations, particularly to the General Assembly, could not escape the reform process.

63. Furthermore, the Charter was the product of the international juncture at which the Organization had emerged and concerns of the greater imbalances and inequalities within the United Nations had led an overwhelming majority of its members to advocate a revision with a view to their elimination. The reform process had to encompass the Security Council as well as the revitalization of

the role of the General Assembly. Additionally, the legal opinions and recommendations of the Special Committee would be considered necessary and would be welcomed by the different General Assembly open-ended working groups dealing with the reform of the Organization. It was stressed that the purpose of the proposal was not to duplicate efforts undertaken in the other open-ended working groups of the General Assembly. The Special Committee could contribute with a legal analysis of the issues under consideration by the working groups, which, far from causing a conflict of interests or duties with those groups, was more necessary than ever.

64. While acknowledging that the revised version of the working paper represented an improvement over previous versions, some delegations observed that a risk was being run of unnecessary duplication of the work of other groups already dealing with the same issues, since even a legal analysis would entail making judgements on options of a political nature. Doubts were thus cast on whether the Special Committee could make a timely and useful contribution to the work of said groups.

65. A view was expressed that even though the working paper's proposal was not ultra vires, it could still be considered imprudent owing to the effect it might have on other working groups. Additional doubts were raised with regard to the premises in the second part of the working paper and to the possibility of engaging in a legal analysis of General Assembly resolutions.

66. There was also the view that if legal analysis were to have been required by other groups working on reforms, they would have requested it. While a view was expressed that the Special Committee was a legal body, it was noted that despite their legal backgrounds the delegates who composed the Committee were nonetheless acting as diplomats.

67. It was also felt that the time-frame in which the Special Committee fulfilled its mandate, namely fixed annual sessions, was not the most appropriate to offer timely assistance to such working groups. In the view of some delegations the mandate of the Special Committee should be and is a permanent mandate that is not necessarily linked to the temporary nature of the working groups of the General Assembly.

68. Some delegations considered the working paper a positive contribution which fell within the Special Committee's mandate and merited discussion.

69. Other delegations expressed the view that certain elements of the working paper, such as the issue of Security Council procedures and the relationship between the General Assembly and the Security Council, inter alia the principle of sovereign equality and equitable geographic representation, warranted consideration by the Special Committee. Some delegations underlined that the questions concerning the procedures and the working methods of the Security Council, and related transparency, fell within the specific mandate entrusted by the General Assembly to the open-ended working group on the reform of the Security Council.

70. The view was expressed that the points identified in the proposal were very useful and relevant in the framework of the reform of the Organization, and ways of implementing them should be found.

71. The sponsor identified three issues within the list of tasks to be performed by the Special Committee as contained in the revised proposal, namely items (b), (e) and (f).

72. Some delegations expressed their support to this approach and their intention to present, at a subsequent session of the Committee, working papers on the three items initially identified by Cuba.

73. Other delegations expressed their disagreement with the above approach.

74. The sponsor stressed that the working paper in no way sought to retard the work of other groups, particularly those concentrating on reform of the Security Council where no recommendations had been made. The final objective of the proposal was not to reform the Charter immediately, but to contribute to the reform process, particularly the process of reforming the composition of and relationship between the principal organs of the United Nations, thereby strengthening the role and the effectiveness of the Organization in the maintenance of international peace and security. The Special Committee could, in its view, carry out studies regarding specific parts of the working paper, as the Special Committee had an ample mandate which provided it with the freedom to address any issue which it felt required its attention.

IV. PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES

A. Consideration of the revised proposal submitted by Sierra Leone, entitled "Establishment of a Dispute Prevention and Early Settlement Service"

75. At the 6th meeting of the Working Group, on 31 January 1997, the representative of Sierra Leone introduced a revised proposal (A/AC.182/L.96), which was considered at the 6th to 8th meetings of the Working Group and at the 219th meeting of the Committee. The revised proposal read as follows:

"1. The idea of concentrating United Nations efforts on a situation that may become an inflamed dispute likely to endanger international peace and security has now been accepted, but the United Nations has not developed a special mechanism to deal with so many current crises. While the then Secretary-General reorganized the Secretariat in such a way that information on incipient crises is being collected, the Secretariat is being downsized and is not likely to be increased to deal with an avalanche of new problems.

"2. A new, not too expensive mechanism is needed for prevention activities. The Sierra Leone proposal can, it is hoped, fill this gap. As the Secretary-General pointed out in his annual report to the General Assembly at its forty-ninth session,[11] preventive measures are highly cost-effective, as the sums they require are paltry by comparison with the huge costs in human suffering and material damage which war always brings, and they also compare favourably 'with the less huge, but nevertheless substantial, cost of deploying a peacekeeping operation after hostilities have broken out'.

"3. The present proposal does not require the creation of new bureaucracy; it would be a small subsidiary organ of the General Assembly established under Article 22 of the Charter of the United Nations, much smaller than the many special committees and working groups that the General Assembly has established in the past.

"4. The proposed mechanism may perhaps be called more accurately a 'Dispute Prevention and Early Settlement Service' rather than 'Dispute Settlement Service', as some objections have been raised to the latter title. Its main function would be to coordinate activities both of the United Nations and of relevant regional organizations at the pre-dispute stage or early dispute stage when a situation needs to be monitored in order to prevent its aggravation.

"5. The mechanism would consist of a Board of Administrators or Directors with five members to be elected by the Sixth Committee of the General Assembly from among 10 candidates proposed, two each by the five regional groups on the Committee as best qualified for administering the Dispute Prevention and Early Settlement Service. The five non-elected candidates would become alternates that would be available to act as substitutes for one or more of the regular members who were not available for a particular activity, because of health or some other special reason. Each Administrator or Director would be elected for three years and would be eligible for re-election. The members of the Board and the alternates would be seconded by their permanent missions to the United Nations and their salaries would continue to be paid by the missions. The Board would

be located in New York and secretariat services would be arranged for it by the United Nations Office of Legal Affairs. Alternatively, a Committee of five persons with a Chairman, like any working group, could be formed to carry out the functions of the Service, the members of the Committee to be elected as hereinbefore mentioned. The Sierra Leone delegation would be willing to accept any suitable word in place of the word 'Administrator' if it is not acceptable to the majority of delegations.

"6. To maintain liaison between the Board and the three principal organs, which are specially concerned about the escalation of situations into full-blown disputes, the President of the Security Council, the President of the General Assembly and the Secretary-General would be invited to appoint their personal representatives who would serve as a link between each of them and the Board, exchange information and participate in the meetings of the Board without a vote. In this way any duplication of efforts would be avoided and coordination of activities would be facilitated.

"7. The leadership of each regional group would keep its members of the Board and alternates informed about any relevant preventive activities of the regional organizations or arrangements in the region.

"8. One of the main functions of the Board would be to maintain a register of experts (who may be called either settlers, preventers or facilitators of disputes) on the prevention and settlement of disputes and adjustment of situations, composed of names of individuals compiled by the Board itself. It should also include individuals nominated by Member States. A State may nominate either its own nationals or well-known individuals of some other nationality well acquainted with the problems of a particular region. Again, delegations are at liberty to suggest suitable designations for the experts. The Sierra Leone delegation would, however, prefer to retain the word 'settler'.

"9. Having received information through diplomatic channels, the media, the academic community or non-governmental organizations, the Board of Administrators would consult with the Department of Political Affairs of the United Nations Secretariat, which includes six regional divisions (two for Africa, two for Asia and one each for the Americas and Europe) and specializes in collecting information that is relevant for preventive activities and analysing it for the purpose of identifying situations in which the United Nations could play a useful preventive role. If it is determined that a particular situation may become a threat to the peace, the Dispute Prevention and Early Settlement Service would contact the States concerned and offer its services. If the offer should be rejected by any party, no further action would be taken by the Service.

"10. The Security Council, the General Assembly and the Secretary-General would be entitled to request the Service to explore whether a particular situation requires their attention. The Presidents of the Assembly and of the Council and the Secretary-General would be kept informed by their representatives on the Board about the progress of each case and would in turn inform the Board of the views and relevant activities of the persons they represented. By the same channel, the three officials would be informed about the final result, positive or negative, of the Board's and of the experts' activities.

"11. The States concerned may prefer receiving quiet and confidential assistance from the Service rather than raising the issue in the General

Assembly or the Security Council. The Board of Administrators, after consulting the parties concerned, would choose the appropriate persons from the Register of experts (settlers) to deal with the particular problem: ascertain the facts and views of the parties, consult with the parties about the preferred approach - further consultations, good offices, mediation or conciliation - and advise them how best to proceed.

"As the General Assembly has stated, prevention requires 'discretion, confidentiality, objectivity and transparency', as appropriate;[12] if the experts (settlers) would observe these injunctions, they would have a chance to find a solution. If one effort does not succeed, the settler or settlers monitoring the situations would propose some other approaches. With patience, persistence and ingenuity, after trying a number of approaches and presenting possible solutions, there is a good chance that a solution would be found which would be considered by the parties to be sufficiently equitable.

"12. It should be emphasized that the essence of the Sierra Leone proposal is to have some form of third-party service which will offer assistance to parties in dispute. The services to be offered should be spontaneous and voluntary. It is for the parties to decide if they want to accept the offer of the services.

"13. The proposed Service might be given a trial run of at least three years, and if successful, would be made permanent. The General Assembly would retain in any case the power to revise at any time the mandate of the Service or to terminate it completely.

"14. The Sierra Leone delegation has tried to take into account in this revised proposal both the previous discussions at the United Nations and the recent debate in this Committee. As it has stated previously, Sierra Leone considers that its proposal is not a quantum leap into the unknown, but rather builds further on the implementation of various exhortations and decisions by the General Assembly and the Security Council and the Secretary-General, and would make it easier for the United Nations to deal effectively with preventive measures, thus strengthening the role of the United Nations in the maintenance of international peace and security. While the details of this proposal can be changed or improved, what matters most to Sierra Leone and other supporters of this proposal is that the establishment of this Service would be beneficial to the United Nations and to humankind."

76. In presenting the revised proposal, the sponsor stated that it constituted a revised version of the proposal which its delegation had submitted in 1993 (A/48/398), to which it had submitted an annotation in 1995 (A/50/403). It took into account the comments made in the Committee when that earlier proposal was considered.

77. The sponsor further pointed out that the revised proposal did not differ fundamentally from its predecessor. In particular, the basic concept remained the same: namely, to establish a new and effective mechanism of a limited size in order to take advantage of the options for peacemaking and preventive diplomacy which were available under Article 33, paragraph 1, of the Charter. The proposed mechanism would assist the parties at a very early stage in the development of a situation or dispute by presenting them with the various options at their disposal for dealing with their difficulties, persuading them to use one or more of those options and helping them to address the various

technical problems to which its use might give rise. Most of the work involved in the operation of the mechanism would be done in New York.

78. The sponsor explained that the revised proposal was directed at improving the capabilities of the United Nations in the field of preventive diplomacy, the importance and value of which had been recognized by the General Assembly, the Security Council and the Secretary-General. It should be seen as a response to the call which the Secretary-General had made in his position paper on the occasion of the fiftieth anniversary of the United Nations, entitled "Supplement to an Agenda for Peace" (A/50/60-S/1995/1), for new ways of strengthening preventive diplomacy and the abilities of the United Nations to address impending crises. Its purpose was also to ensure the effective implementation of the Declaration on the Prevention and Removal of Disputes and Situations Which May Threaten International Peace and Security and on the Role of the United Nations in this Field, annexed to General Assembly resolution 43/51 of 5 December 1988. That Declaration had recognized the important role which the General Assembly had to play in the field of preventive diplomacy. The mechanism envisaged by the revised proposal would strengthen the capabilities of the General Assembly effectively to discharge its role in that sphere through the creation of a subsidiary organ under Article 22 of the Charter.

79. In the sponsor's view, the proposed mechanism was also aimed at improving cooperation between the General Assembly, the Security Council and the Secretary-General, as well as regional arrangements and agencies, thereby preventing a duplication of efforts and combining their resources in the fields of dispute prevention and dispute settlement.

80. In order better to reflect the nature of the proposed mechanism, its title had been changed in the revised proposal to "Dispute Prevention and Early Settlement Service".

81. The sponsor emphasized that it was not wedded to any particular aspect of its proposal and was open to any suggestions for improvements. In particular, it did not insist that the proposed mechanism should have a Board of Administrators.

82. Questions were asked concerning the relationship between the revised proposal and its predecessor. Among other things, it was asked whether the revised proposal replaced the earlier proposal or whether that earlier proposal was still before the Committee, subject to what was contained in the revised proposal. The sponsor explained that it was not abandoning its previous proposal, but was simply revising its contents. Both the revised proposal and its predecessor should, therefore, be examined. It was also suggested that the sponsor might consider presenting a revised proposal with the same format as the previous one.

83. Some delegations expressed the view that there was a need for a new mechanism to contribute to the more effective conduct of preventive diplomacy. It was necessary to examine the details of the proposed mechanism in order to see whether it was calculated to meet that need. To that end, the suggestion was made that a small informal working group might be assembled with a view to identifying the elements which were of value in the revised proposal and on which it might be possible to achieve a consensus.

84. On the other hand, other delegations stated that such a step was premature. It was only if it was generally accepted that there was a need for some new mechanism that the Working Group should proceed to examine the details of the

revised proposal and there was not yet agreement on that point. In this regard, the view was expressed that there already was in existence an adequate array of mechanisms for the conduct of preventive diplomacy and what was needed was not more mechanisms but the better implementation of existing ones.

85. Mention was made of the work being carried on in the Sub-group on Preventive Diplomacy and Peacemaking of the Informal Open-ended Working Group on an Agenda for Peace. It was questioned whether the Committee should be addressing issues which were also under discussion in that forum. If the Committee was to address such issues, it was asked whether there should not be close coordination between the two bodies. The question was raised whether Sierra Leone had taken into account in revising its proposal the work done on the subject in that other forum.

86. A number of observations were made on the substance of the revised proposal and on the need for the service proposed by the sponsor.

87. Some delegations remarked that any new procedure or mechanism should be based upon the consent of the parties to a dispute or situation and should recognize and apply the principle of the free choice of means. Some concern was expressed that the revised proposal did not pay sufficient regard to this consideration. In particular, apprehension was expressed lest the Board choose settlers from the register of experts without the agreement of the parties to a dispute or situation. On the other hand, it was observed that one of the valuable features of the proposed mechanism was that it was based throughout on the necessity of the consent of the parties. The sponsor also remarked that it was intended that it was necessary to secure the agreement of the parties on the identification of each settler whom the Board selected from the register.

88. It was felt that a list of "settlors" might not in fact prove to be of any practical utility, in view of the experience of previous lists or rosters of persons which had been set up by the Secretary-General at the request of the General Assembly and in pursuance of the provisions of multilateral conventions. In response, it was remarked that the revised proposal had the merit of not simply providing for the creation of another list of experts, but of providing also for a mechanism which was proactive in nature and which would make use of that list in the contacts it made on its own initiative with States which were in disagreement or dispute. In this connection, emphasis was placed on the value of the proposed mechanism as a means of ensuring that the parties to a dispute or situation were fully aware of all of the possible avenues for resolving their difficulties and were afforded the necessary legal expertise and advice regarding their operation. The value of the envisaged mediation role of the proposed mechanism was also stressed. It was asked whether the mechanism might go so far as to suggest itself terms of settlement or adjustment of a dispute or situation.

89. Emphasis was placed upon the merit of the proposal in aiming at the creation of a cost-effective machinery for the prevention and early resolution of disputes. The Board of Administrators would be members of permanent missions to the United Nations and their salaries would continue to be paid by their Governments. The revised proposal would accordingly not have any additional financial implications for States. The cost-effectiveness of preventive diplomacy compared with the substantial costs of peacemaking and peacekeeping was noted.

90. On the other hand, doubts were expressed as to the usefulness of the Board of Administrators. It was asked whether there was a need for any

institutionalized or standing body and whether it might not be better if the roster or list of settlers were to be maintained by the Secretary-General, representing a resource on which he or she might draw as and when the need might arise.

91. The relationship between the Board of Administrators of the proposed mechanism and Article 101 of the Charter gave rise to some concern. In particular, the apprehension was expressed that the conditions of service of the members of the Board would detract from their neutrality, which would, in turn, undermine the effectiveness of the proposed mechanism.

92. At the same time, if there were a Board of Administrators, the question was raised as to whether Governments would be prepared to pay the salaries of their representatives on the Board, as those representatives would be engaged in work which was typically not of any direct, immediate and visible benefit to their home State. Clarification was also sought regarding who would bear the cost of missions and the expenses which would inevitably be involved in the conduct by the mechanism of efforts at dispute settlement.

93. There was an exchange of views on the confidentiality of the proposed mechanism, confidentiality being a feature of the utmost importance in the successful conduct of preventive diplomacy. Concern was expressed in this regard that the participation in the work of the Board of Administrators of representatives of the Security Council and of the General Assembly, as well as of the Secretary-General, would undermine that confidentiality, as might also the reports which it was proposed that the Board should make to the Assembly.

94. It was observed that a further merit of the revised proposal was that it would help to improve the Organization's conflict-detection machinery. Concerns were expressed, though, regarding the sources of the information of which it was proposed that the mechanism would avail itself. In particular, it was feared that use by the mechanism of unofficial sources of information would lead to allegations of partiality and would undermine the atmosphere of trust that was essential to the work of a United Nations body. The apprehension was also expressed that the mechanism would be perceived as an intrusion, particularly with regard to situations which were internal to States. The view was expressed that the mechanism should limit itself to information provided through official channels. Concern was also expressed in this connection regarding any over-reliance by the mechanism on the Department of Political Affairs of the Secretariat.

95. The relationship between the proposed mechanism and the other principal political organs of the United Nations was also the subject of discussion.

96. With regard to the Security Council, it was felt that there might be an overlap of roles between that body and the proposed mechanism. Doubts were also raised as to the compatibility of various features of the proposed mechanism with specific provisions of the Charter relating to the functioning of the Security Council. In particular, it was questioned whether the mechanism was consistent with the primary responsibility of the Council for the maintenance of international peace and security under Article 24, paragraph 1, of the Charter. In response, it was remarked that that responsibility was primary in nature only and not exclusive. The view was also expressed that it was not possible to accept that the Security Council had sole, or even primary, responsibility for the conduct of preventive diplomacy, which was an evolving field of United Nations activity in which clear-cut roles had not yet been assigned to or assumed by the various organs. It was recalled that Chapter IV of the Charter

accorded the General Assembly an important role in the peaceful settlement of disputes and adjustment of situations and that the proposed mechanism was intended to constitute a subsidiary organ of that body.

97. With regard to the General Assembly, a question was raised as to whether the Assembly might take action in relation to a dispute or situation at the same time as the proposed mechanism, and also whether the Assembly would be informed by the proposed mechanism of any failure to resolve a dispute or situation in order that the Assembly might then take action in respect of it. Clarification was sought as to how precisely the General Assembly would supervise the operation of the proposed mechanism and how the accountability of the mechanism to the Assembly would be ensured.

98. There was also a discussion of the relationship between the proposed mechanism and the Secretary-General. A question arose as to whether the Secretary-General might take action in respect of a given dispute or situation at the same time as the proposed mechanism. Concern was expressed lest there be an overlap in the roles of the mechanism and the Secretary-General and the Secretary-General's conduct of preventive diplomacy be inhibited. The view was expressed in this regard that it might be preferable if the Secretary-General were to perform the functions which were envisaged for the Board of Administrators. Not only would this avoid any duplication of functions between the mechanism and the Secretary-General, but it would also avoid any overlap with the role of the Security Council.

99. Remarks were also made concerning the relationship between regional organizations and the proposed mechanism. Some concern was expressed lest the proposed mechanism overlap with the functions of regional arrangements and agencies under Chapter VIII of the Charter and under Article 52, in particular. Some delegations expressed the view that the resolution of disputes and adjustment of situations which were yet in their early stages of development might be better left to regional organizations, so as not to overburden the United Nations. Reference was made in this regard to the mechanism for prevention management and resolution of disputes established within the framework of the Organization of African Unity and to the mechanism of the Organization for Security and Cooperation in Europe.

100. Clarification was sought regarding the proposed coordination role which it was said that the proposed mechanism would play, as well as regarding the relationship and possible contradiction between the mechanism and Article 33 of the Charter. Some delegations said that clarification was needed of the precise nature of the disputes or situations with which the mechanism was to deal, it being impossible to take any position on the revised proposal in the absence of such legally important information. In reply, the sponsor remarked that it was intended that the mechanism should be able to deal with all disputes or situations.

B. Consideration of the working paper submitted by Guatemala, under the title "Possible amendments to the Statute of the International Court of Justice to extend its competence with respect to contentious matters to disputes between States and international organizations"

101. At the 8th meeting of the Working Group, on 3 February 1997, the delegation of Guatemala introduced working paper A/AC.182/L.95/Rev.1 under the above title, reading as follows:

"A. Article 34, paragraph 1, should read:

'1. Only States and, under the conditions laid down in Articles 36A and 36B, the United Nations or any other international organization comprised of States and established by a multilateral treaty registered in accordance with Article 102 of the Charter of the United Nations, may be parties in cases before the Court.'

"B. Insert an article 36A reading:

'Article 36A

'1. The Court shall be competent to deal with any dispute between a State member or a number of States members of an international organization, on the one hand, and the organization, on the other, where:

(a) The constituent instrument of the organization confers competence on the Court for such purpose and the dispute falls within the category or one of the categories of disputes provided for in the relevant provisions of the instrument; or

(b) A treaty to which all or a number of the States members of the organization are parties confers competence on the Court for such purpose, the State party or the States parties to the dispute are parties to the treaty, the dispute falls within the category or one of the categories of disputes provided for in the relevant provisions of the treaty, and the organization has, by means of a declaration, already accepted the competence conferred on the Court by the treaty with respect to the dispute; or

(c) The State party or States parties to the dispute, on the one hand, and the organization, on the other, have decided, by special agreement, that the dispute shall be referred to the Court.

'2. Article 36, paragraph 4, shall apply to declarations under paragraph 1 (b) above.

'3. In the case of the United Nations, the prior acceptance of the competence of the Court provided for in paragraph 1 (b) above shall take the form of a General Assembly decision.

'4. In the event of a dispute as to whether the Court has jurisdiction under this Article, the matter shall be settled by the decision of the Court.'

"C. Insert an Article 36B reading:

'Article 36B

'1. The Court shall be competent to consider any dispute between a State or a number of States, on the one hand, and an international organization of which none of the States is a member, on the other

hand, in accordance with the terms of a special agreement concluded between the two parties to the dispute.

'2. In the event of a dispute as to whether the Court has jurisdiction under this Article, the matter shall be settled by the decision of the Court.'

"D. Insert an Article 36C reading:

'Article 36C

'In any of the cases provided for in Articles 36A or 36B, neither Article 31, paragraphs 2 to 6, nor Article 34, paragraph 3, shall apply.'

"E. In Article 40, insert a paragraph 3A reading:

'3A. In any of the cases provided for in Article 36A, paragraph 1 (a) and (b), the dispute shall be referred to the Court by a written application, which shall be addressed to the Registrar and shall indicate the subject of the dispute and the parties thereto.'

"F. In Article 53, paragraph 2, reference should be made to Articles 36A and 36B, in addition to Articles 36 and 37.

"G. In Article 62, paragraph 1, add after the word 'State' the words 'or an international organization to which the Court is open in accordance with Article 34, paragraph 1'."

102. In introducing the working paper, the sponsor recalled that in the extensive debate held during the 1992 session of the Special Committee, consensus had been unattainable on the idea of empowering the Secretary-General with the right to request advisory opinions from the International Court of Justice. It was pointed out that the idea of extending the Court's jurisdiction in contentious proceedings to encompass disputes between States and intergovernmental organizations had long been advocated. The main argument in favour of such reform was the fact that intergovernmental organizations played an ever increasing role in international affairs and conducted extensive activities involving States and their Governments. It was noted that 16 States had favoured such a reform when the Secretary-General had conducted a survey on the role of the Court in 1971 (A/8382). Furthermore, it was also remarked that the General Assembly had requested the Special Committee, through its resolutions 48/36 of 9 December 1993, 49/58 of 9 December 1994, 50/52 of 11 December 1995 and 51/209 of 17 December 1996, to continue the examination of proposals regarding the enhancement of the role of the Court.

103. The sponsor indicated its preference for extending the Court's jurisdiction, under specific conditions, to all intergovernmental organizations. Another possibility consisted of extending the Court's competence only to those organizations with links to the United Nations system. As for the proposed Articles 36A and 36B, which set out the conditions for extending the Court's jurisdiction, it was stressed that the proposed system was entirely unrelated to the optional clause under paragraph 2 of Article 36 of the Statute of the Court. A special agreement, concluded between the State or States concerned and the respective international organization, would be required for the Court to have competence in the dispute.

104. An exchange of views took place regarding the proposal. Some delegations pointed out that the wish repeatedly expressed by the Court, namely that an increased number of States accept its jurisdiction, was not addressed by the proposal.

105. Some representatives were of the view that the proposal would entail the complex procedure of amending the Charter of the United Nations, a matter on which no consensus existed. In some cases, amendments to the constituent instruments of the international organizations concerned might also become necessary.

106. Some delegations expressed the view that much of the substance of the issues raised was valid but that no position either in favour or against the proposal could be taken until a further session of the Special Committee.

107. The point was made that the usefulness of the proposal remained doubtful since no demand for the proposed changes seemed to exist. It was remarked that the proposal sought to extend the Court's competence to the kinds of cases which had been resolved quite successfully through other mechanisms, particularly arbitration, and that no particular advantage over those means would seem likely to result from the proposal under consideration. On a practical level, it was indicated that the President of the Court had recently indicated that the Court had a full workload on its docket.

108. Clarification was sought by some delegations as to the exact meaning of "international organization" in the Guatemalan proposal. It was possible that, as a result of the amendments, cases which were not of sufficient importance to be dealt with by the Court would nevertheless be brought before it.

109. Doubts were raised regarding the kind of disputes the Court might have to resolve and what the applicable law would be. The observation was made that an overlapping of jurisdictions might arise in instances where international organizations already had their own procedures for dealing with disputes such as those which would be covered by the proposal. It was also remarked that not all intergovernmental organizations possessed international legal personality to enable them to have locus standi before the Court.

110. From a procedural view, concerns were voiced by some delegations regarding the competent United Nations organ that would express the Organization's consent to be bound by the Court's decisions, as well as the ambiguity on the question of who would represent the United Nations before the Court in such cases. Doubts were raised regarding the Court's competence to interpret provisions of the Charter of the United Nations.

111. Difficulties were also raised regarding implementation by international organizations of the Court's decisions. It was noted that due consideration had to be given to the possible consequences the proposal might have upon States not parties to the case, but members of the international organization bound by the decision of the Court. Questions were also raised regarding certain international organizations whose membership included non-State entities. The point was also raised as to who would bear the financial consequences of a decision by the Court. It was stated that difficulties might also arise in situations where, for example, the United Nations itself would be a party to a case and the Security Council could be called upon to make recommendations or decide upon measures to give effect to the Court's decisions, in accordance with Article 94, paragraph 2, of the Charter of the United Nations.

112. In response to the observations made, the sponsor, inter alia, pointed out that the proposal had to be considered in the light of the future workload of the Court, and that examples of cases which could arise between States and international organizations might be found in the United Nations Juridical Yearbook. Some constituent instruments of international financial organizations had established mechanisms for the purpose of dealing with such cases. The observation was made that international law would be applicable to any dispute covered by the proposal.

113. In the sponsor's view the matter of determining the organ called upon to accept the Court's jurisdiction and to act on behalf of the organization concerned could be resolved by reference to the respective internal rules of the organization concerned. The sponsor also recalled that the United Nations had been represented by the Secretary-General before the Court in advisory proceedings. Additionally, it was pointed out that, for example, in cases involving interpretation or application of the Convention on the Privileges and Immunities of the United Nations, a "binding" advisory opinion from the Court might be obtained. As for the Court's competence to interpret the Charter of the United Nations, the sponsor pointed out that it had already interpreted, for example, the provisions of Articles 4 and 17.

114. As to the possibility that States not parties to the case might be bound by the Court's decision, the sponsor noted that this had already occurred in some cases before the Court, notably in a case concerning the application of the Convention on the Privileges and Immunities of the United Nations, where not all the Members of the Organization were parties to that Convention. As for the questions raised regarding certain international organizations whose membership included non-State entities, it was remarked that this did not prejudice the fact that only States and international organizations were intended to be subject to the Court's jurisdiction. In the sponsor's view, the international organization concerned would have to bear the financial consequences of a judgement by the Court resulting from the extension of its jurisdiction, which was precisely what occurred when arbitration was resorted to.

C. Consideration of the working paper submitted by Costa Rica (A/AC.182/L.97) as an alternative drafting to the working paper submitted by Guatemala (A/AC.182/L.95/Rev.1), entitled "Possible amendments to the Statute of the International Court of Justice to extend its competence with respect to contentious matters to disputes between States and international organizations"

115. At the 11th meeting of the Working Group, on 5 February 1997, the delegation of Costa Rica introduced working paper A/AC.182/L.97 under the above title. The working paper read as follows:

"**Statute of the International Court of Justice**

"Article 34

"1. **States and public international organizations, so authorized by their constituent instruments**, may be parties in cases before the Court.

"2. The Court, subject to and in conformity with its Rules, may request of public international organizations information relevant to cases before it, and shall receive such information presented by such organizations on their own initiative.

"3. Whenever the construction of the constituent instrument of a public international organization or of an international convention adopted thereunder is in question in a case before the Court, the Registrar shall so notify the public international organization concerned and shall communicate to it copies of all the written proceedings.

"Article 35

"1. The Court shall be open to the States parties to the present Statute **and to the public international organizations so authorized by their constituent instruments.**

"2. The conditions under which the Court shall be open to other States shall, subject to the special provisions contained in treaties in force, be laid down by the Security Council, but in no case shall such conditions place the parties in a position of inequality before the Court.

"3. When a State which is not a Member of the United Nations, **or a public international organization,** is a party to a case, the Court shall fix the amount which that party is to contribute towards the expenses of the Court. This provision shall not apply if such State is bearing a share of the expenses of the Court.

"Article 36

"1. The jurisdiction of the Court comprises all cases which the parties **or which public international organizations, so authorized by their constituent instrument,** refer to it and all matters specially provided for in the Charter of the United Nations or in treaties and conventions in force.

"2. The States parties to the present Statute **and public international organizations, so authorized to do so by their constituent instrument,** may at any time declare that they recognize as compulsory ipso facto and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

(a) The interpretation of a treaty;

(b) Any question of international law;

(c) The existence of any fact which, if established, would constitute a breach of an international obligation;

(d) The nature of extent of the reparation to be made for the breach of an international obligation.

"3. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain States **or public international organizations,** or for a certain time.

"4. Such declarations shall be deposited with the Secretary-General of the United Nations, who shall transmit copies thereof to the parties to the Statute, **to the public international organizations that had previously deposited such declaration** and to the Registrar of the Court.

"5. Declarations made under Article 36 of the Statute of the Permanent Court of International Justice and which are still in force shall be deemed, as between the parties to the present Statute, to be acceptances of the compulsory jurisdiction of the International Court of Justice for the period which they still have to run and in accordance with their terms.

"6. In the event of a dispute as to whether the Court has jurisdiction, the matter shall be settled by the decision of the Court.

"Article 40

"3. He shall also notify the Members of the United Nations through the Secretary-General, and also any other States **and public international organizations** entitled to appear before the Court.

"**Charter of the United Nations**

"**Article 96 bis**

The United Nations and its specialized agencies may at any time be authorized by the General Assembly to be parties in cases before the International Court of Justice and to accept the jurisdiction of the Court in any of the manners established in article 36 of the Statute of the International Court of Justice."

116. In introducing the working paper, the sponsor stressed the interest with which it viewed the Guatemalan proposal on the topic (see para. 101 above). The text being sponsored by the Costa Rican delegation was intended to cover the same subject matter of the Guatemalan proposal, by introducing in the relevant provisions of the Statute of the Court and the Charter of the United Nations only those changes which were absolutely necessary to achieve the purposes of the proposal. The sponsor expressed the hope that the matter would be maintained on the agenda of the Special Committee.

V. PROPOSALS CONCERNING THE TRUSTEESHIP COUNCIL

117. At the 8th and 9th meetings, on 3 and 4 February 1997, the Special Committee considered proposals concerning the Trusteeship Council.

118. Some delegations expressed the view that the majority of the replies from States contained in the report of the Secretary-General (A/50/1011) supported the abolition of the Trusteeship Council, which, according to them, had fulfilled its mandate. Abolition of the Trusteeship Council, as proposed in 1993 by the Secretary-General, was timely and was consistent with the ongoing reform of the United Nations. The necessary legal steps should therefore be taken to amend the Charter by deleting provisions relating to the Trusteeship Council. Taking such a step would, in their view, be similar to the decision to amend the Charter by deleting the "enemy States" clause. The view was expressed that such a technical legal exercise should be viewed as legally separate from, and could proceed without prejudice to, those steps required to add a new entity to the Charter. Such an exercise should commence in order to ensure that the deletion of provisions dealing with the Trusteeship Council would be considered at the same time as other proposed Charter amendments. It was also considered that abolition of the Council should be part of an integral process of reforms of the Organization. The point was also made that in the course of the discussion in the Sixth Committee, divergent views had been expressed.

119. Reference was made to a proposal submitted by Malta to convert the Trusteeship Council into a coordinator for the global commons or the common heritage of mankind. Some delegations expressed their support for this proposal which, in their view, deserved attentive consideration. It was also pointed out that this proposal should still receive further discussion in political forums before any legal steps could be taken to amend the Charter towards that end.

120. Other speakers expressed reservations with regard to the proposal to abolish the Trusteeship Council, which, in their view, would constitute a premature exercise. Some delegations pointed out that the Trusteeship Council had not completed its mandate, particularly taking into consideration article 77, paragraph 1 (c), of the Charter. Other delegations said that there was no urgent need to undertake such an exercise, since the Trusteeship Council did not currently hold any meetings, had no staff and did not require the Organization's resources. Some delegations pointed out that the proposed abolition of the Trusteeship Council would moreover entail amendments to the Charter, an exercise which, in their view, was a complex undertaking and would lead to an imbalance in the current structure of the Charter. It was also pointed out that modification of the Trusteeship Council would also entail amendments to the Charter.

121. With respect to the proposal by Malta to convert the Trusteeship Council to serve as coordinator of the global commons or the common heritage of mankind, the view was expressed that such a conversion would lead to a duplication of the work of other bodies, such as the International Seabed Authority, the Commission on Sustainable Development and the United Nations Environment Programme. The question was also raised as to whether such a role of coordinator of the global commons could not be fulfilled by a more appropriate organ within the existing United Nations system. It was further observed that, while the abolition of the Trusteeship Council could be carried out by amending provisions of the Charter, it did not follow that such a body would automatically assume another set of functions.

122. Recognizing the divergent views that had been expressed on the issue of the future of the Trusteeship Council, delegations stressed that more time would be needed for an in-depth discussion of the matter before any decision on it could be reached.

VI. IDENTIFICATION OF NEW SUBJECTS, ASSISTANCE TO WORKING GROUPS ON THE REVITALIZATION OF THE WORK OF THE UNITED NATIONS AND COORDINATION BETWEEN THE SPECIAL COMMITTEE AND OTHER WORKING GROUPS DEALING WITH THE REFORM OF THE ORGANIZATION

A. Proposal on identification of new subjects

123. In connection with the identification of new subjects for future consideration by the Special Committee, the delegation of Mexico suggested that, as a principal organ of the United Nations, the International Court of Justice should be part of the process of reform and revitalization that was currently being undertaken in the Organization. In that delegation's view, it would therefore be timely, after the Court's 50 years of existence, to initiate a review of practical ways and means to strengthen the Court and enhance its capacity to contribute to the peaceful settlement of disputes and the maintenance of international peace. Such a view could focus on the practical matters of the functioning of the Court that could be improved without the need to amend the Charter or the Statute. Taking into account that this matter was not included in the agenda of any other committee or working group, the Special Committee could be the appropriate organ to carry out such a review.

124. The delegation of Mexico explained that the number of cases that had been submitted to the Court in recent years was greater than in the past and this trend would probably continue in the future. Without purporting to undermine in any way the authority or the independence of the Court, such a review could pinpoint those aspects of its practice that reduce its capacity to fulfil effectively its mandate and thus provide it with the tools that would allow it to deal with a larger number of cases in a more expeditious and efficient manner.

125. As to the procedure to be followed, the Mexican delegation suggested that the Special Committee could recommend to the General Assembly that it request comments from States and from the Court itself on possible ways to enhance the practical efficiency of the Court and the impact that the increase in the Court's workload had had on the Court's procedures. In the light of the comments received, the Committee could then discuss practical measures to strengthen the Court, with full respect for its authority and independence. It was suggested that this question could be included in the Special Committee's future agenda.

126. A number of delegations commented favourably on the above proposal of Mexico. While some delegations were in favour of requesting comments solely from the Court, others stressed that comments should be requested from both the Court and Member States. It was recalled in this connection that the latter had been the course of action taken by the General Assembly on the occasion of the twenty-fifth anniversary of the Court in considering an item on the review of the role of the Court, which led to the adoption of Assembly resolution 3232 (XXIX) of 12 November 1974.

127. Some delegations made it clear that in their view the main issue was that the Court needed more resources than it had at present in order for it to fulfil its mandate under conditions that conformed to the rules in force.

128. Some delegations stressed that the Special Committee should be careful not to intrude into areas which could be considered as pertaining to the internal

functioning or micromanagement of the Court. Some other delegations were also of the view that before any specific recommendation was made, the proposal by Mexico should be further clarified and elaborated upon.

129. The delegation of Mexico indicated that the sole object of the proposal was to help the Court to deal with its growing workload by considering practical means to streamline its procedures. The intention was not to intervene in the internal administrative affairs of the Court, for its authority and independence should be preserved at all times.

130. On the understanding that the recommendation would have no implications for any changes in the Charter of the United Nations or the Statute of the International Court of Justice, the Committee recommended to the General Assembly to invite State Members and the States parties to the Statute of the International Court of Justice to present their comments and observations on the consequences that the increase in the volume of cases before the Court has on its operation. The Committee also recommended to the General Assembly to invite the International Court of Justice, if it so desired, to submit its comments on the issue.

B. Proposals on assistance to working groups on the revitalization of the work of the United Nations and coordination between the Special Committee and other working groups dealing with the reform of the Organization

131. With respect to paragraph 5 of General Assembly resolution 51/209, some delegations suggested that, as a useful way of compliance with the Committee's mandate, the Chairman of the Special Committee should contact the chairmen of other United Nations bodies dealing with the reform of the Organization (such as the President of the General Assembly and the chairmen of other relevant committees and working groups) or send them a letter transmitting the agenda of the Special Committee and the text of recommendations it has adopted and indicating its readiness to contribute to their work. The view was expressed that the examination of this question took into consideration the invitation addressed to the Special Committee by the General Assembly in paragraph 5 of General Assembly resolution 51/209. Some delegations felt that this question should be debated further.

132. Other delegations objected to such a proposal, pointing out that it would result in a violation of the mandate of the Special Committee, in which the Committee was requested to report only to the Sixth Committee of the General Assembly, and in interference with other bodies of the United Nations, which were in any event free to invite the Committee to assist them in their work.

C. Consideration of the working paper submitted by Portugal, entitled "Draft resolution"

133. At the 3rd meeting of the Working Group, on 29 January 1997, the representative of Portugal introduced a working paper (A/AC.182/L.92). At the 8th meeting, on 3 February 1997, the representative introduced a revised version of the working paper (A/AC.182/L.92/Rev.1), which read as follows:

"The General Assembly,

"Recalling its resolution 2837 (XXVI) of 17 December 1971, in particular paragraph 42 of its annex II entitled "Conclusions of the Special Committee on the Rationalization of the Procedures and Organization of the General Assembly", reproduced as annex V to the rules of procedure of the General Assembly,

"Taking into account the increasing workload of the Main Committees of the General Assembly,

"Considering that all regional groups should be represented in the Bureau of each of the Main Committees,

"1. Decides to amend the first sentence of rule 103 of the rules of procedure of the General Assembly to read: 'Each Main Committee shall elect a Chairman, three Vice-Chairmen and a Rapporteur';

"2. Decides that this amendment shall take effect as of the fifty-third session of the General Assembly."

134. In introducing the working paper, the sponsor explained that its proposal had been motivated in part by reasons of practicality. As it stood, rule 103 of the rules of procedure of the General Assembly (A/520/Rev.15) stipulated that each Main Committee of the General Assembly was to elect two Vice-Chairmen, as well as a Chairman and a Rapporteur. With the increase in the workload of the Main Committees, this rule had given rise to some problems, especially in cases when officers had to be absent. The election of a third Vice-Chairman would make it possible to deal in a better way with situations of that nature.

135. It was also explained that considerations of fairness lay behind the proposal. In accordance with rule 103 of the rules of procedure of the General Assembly, each Main Committee had a total of four officers. In accordance with rule 103 and in pursuance of established practice, each of those officers was drawn from each of the regional groups. Since there were five regional groups in the Organization, it inevitably followed that, in every Main Committee, one regional group was without representation among the officers of the Committee. The views of that group were accordingly not directly represented in the deliberations of the Committee's officers. This shortcoming would be made good by the election of a third Vice-Chairman, who would be drawn from the one unrepresented regional group.

136. Reference was also made to the disparity which currently existed between the Main Committees of the General Assembly, which, in pursuance of rule 103 of the rules of procedure, each had but two Vice-Chairmen, and the special and ad hoc committees of the General Assembly, which typically each had three.

137. The General Assembly had itself acknowledged the need to increase the number of Vice-Chairmen when it had adopted its resolution 2837 (XXVI) of 17 December 1971, in which it endorsed the conclusions of the Special Committee on the Rationalization of the Procedures and Organization of the General Assembly established under General Assembly resolution 2632 (XXV) of 9 November 1970. Paragraph 42 of those conclusions recommends to the General Assembly that its subsidiary organs should consider, as far as possible, the designation of three Vice-Chairmen in order to ensure the representative character of their officers. By virtue of resolution 2837 (XXVI), those

conclusions were appended to the rules of procedure of the General Assembly as annex V.

138. The proposal of Portugal was discussed at the 3rd to 5th meetings of the Working Group. In response to some requests for clarification and some suggestions, the sponsor pointed out that "regional groups" had the same meaning as "regions" in the annex to resolution 33/138 of 19 December 1978. The sponsor delegation would not object to any initiative tending to adopt the proposed draft resolution during the fifty-first session of the General Assembly. Furthermore, the sponsor favoured the word "Vice-Chairpersons" which was not proposed solely for reasons of consistency with other provisions of the rules of procedure. A positive reception was accorded to the contents of the draft resolution by all the delegations which spoke to it. The reasons which its sponsor had adduced in its support were also widely endorsed. A number of delegations referred specifically to the contribution which the proposal would make to the realization of the principle of equitable geographical representation. The practical contribution which the proposal would make to the effective operation of the Main Committees of the General Assembly was also remarked upon. The problem of States which did not formally belong to any of the regional groups was mentioned.

139. As a result of its deliberations, the Special Committee recommended to the General Assembly for its consideration and adoption the draft resolution contained in paragraph 133 above.

Notes

[1] Official Records of the General Assembly, Thirty-sixth Session, Supplement No. 33 (A/36/33), para. 7.

[2] Ibid., Fifty-first Session, Supplement No. 33 (A/51/33), para. 42.

[3] Ibid., para. 128.

[4] Ibid., para. 56.

[5] Ibid., Fiftieth Session, Supplement No. 33 (A/50/33), para. 56.

[6] Ibid., Fifty-first Session, Supplement No. 33 (A/51/33), para. 65.

[7] WGAP/96/2.

[8] A/50/60-S/1995/1, paras. 66-76.

[9] Official Records of the General Assembly, Fifty-first Session, Supplement No. 33 (A/51/33), para. 128.

[10] For the previous version of the working paper, see Official Records of the General Assembly, Fiftieth Session, Supplement No. 33 (A/50/33), para. 47.

[11] Official Records of the General Assembly, Forty-ninth Session, Supplement No. 1, para. 411.

[12] General Assembly resolution 47/120 A, ninth preambular paragraph.